1944

File No. 0. Shops & Estt. / 44

Legal Deptt.

A **BRANCH**

Subject:— Opinion under the Bombay Shops and Establishments Act, 1939

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File No. 0. Shops & Estt./44

Gen. 194 e.

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C O N T E N T S

Legal Department File No. O. Shops and Estt. /44

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions under the Shops and establishments Act, 939.	
1.	10100/44 — 8941/19-12-44	Clause (k) of sub section (1) of Sec. 4. Question of issuing a notification exempting shops dealing with funeral Articles from the provisions of	144

Mjr/11/7
4 Cs.

EKN
1/8

Submitted.

The Political and Services Department is considering the question of issuing a notification exempting shops dealing with funeral articles from the provisions of the Bombay Shops and Establishments Act, 1939. This exemption will be granted under the provisions of caluse (k) of sub-section (1) of section 4 of the Act by issuing a notification. This caluse (k) refers to total exemption from the Act As this will be determental to the employees, it is proposed to impose certain conditions on the shop owners. These ~~xxxxxx~~ conditions are proposed to be communicated to the owners by a letter. P.& S.D. states that it is usual to impose such conditions by executive instructions and if these are not observed, the exemption is withdrawn. As a precedent, P & S.D. has invited attention to Government Notification No. 143/34, dated the 19th November 1940, under which ce tain chemists and druggists shops were approved for the urpose of caluse (g) of sub-section (1) of section 4 of the Act and to Press Note No. 529, dated the 15th August 1944 under which conditions which would entitle the shop owners to such exemption were announced. R.L.A. is however requested to advise in the matter as the procedure adopted appears doubtful (vide P. & S.D. notes at pages 39 and 42 -43 ante).

* P 88. in P & S.D., file 143/34.XIB.

2. It appears that it would not be feasible to impose any conditions on the owners of the shops by executive instructions after granting them exemption under caluse (k) of sub-section (1) of section 4, as that caluse contemplates complete exemption from the Act. A somewhat similar question has been considered in R.L.A's opinion No. 6003, dated the 11th July 1941 There it was held that the proposal to allow sale of ice etc. After theprescribed closing hour cannot be given effect to by issue of a notification under section 4(1) (k) or section 31 of the Act (vide pages 65-66 of Shops & Estt/41.). An amendment

of the Act appears necessary if partial exemption is to be granted.

Id/ N.R.R.
13/12

S.A. S.

It is true that cl(k) of subsection (1) of section 4 of the Bombay shops and Establishments Act, 1939 does not provide for the grant of a conditional exemption; but there is no objection to imposing conditions by an executive order which in case of non compliance can be enforced by the thereof withdrawing the exemption under subsection (2). The conditions will have no legal sanction behind them. but may in the circumstances secure observance.

Id/
R.T.K.
13/12

A.L.R.

I agree

Reply may be S.A.S's note

Id/-
R.S.H.
15/12

R.L.A.

I agree

Id/- P.N.M.
18/12/44

Mjr/11/7

4 Cs.

Office of the R.L.A.

It is true that clause (k) of sub-section (1) of section 4 of the Bombay Shops and Establishments Act, 1939 does not provide for the grant of a conditional exemption, but there is no objection to imposing conditions by an executive order which in case of non compliance can be enforced by the threat of withdrawing the exemption under sub-section (2). The conditions will have no legal sanction behind them but may in the circumstances secure observance.

Sd/- P.N.Mool
19/12/44

o.

Remembrancer of Legal Affairs.

U.O. to I and S.D., Nl. 8941, dated the 19th December 1944.

Mnr/11/7

4 Cs.